

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	File No.39-SAT-P/LA-98;Call Sign S2332
	)	IBFS File No.SAT-LOA-1997122-0208
	)	File No.40-SAT-P/LA-98;Call Sign S2333
Lockheed Martin Corporation	)	IBFS File No.SAT-LOA-1997122-0206
	)	File No.41-SAT-P/LA-98;Call Sign S2334
	)	IBFS File No.SAT-LOA-1997122-0212
Authority to Construct, Launch,	)	File No.42-SAT-P/LA-98; Call Sign S2335
and Operate a Ka-Band Satellite	)	IBFS File No.SAT-LOA-1997122-0211
System in the Fixed-Satellite Service	)	File No. 43-SAT-P/LA-98; Call Sign S2336
	)	IBFS File No.SAT-LOA-1997122-0213

ORDER ON RECONSIDERATION

Adopted: July 1, 2002

Released: July 5, 2002

By the Commission:

I. INTRODUCTION

1. We have before us a Petition for Reconsideration filed by Litigation Recovery Trust (“LRT”) in the above captioned proceeding. In the proceeding, the International Bureau authorized Lockheed Martin Corporation (“Lockheed Martin”) to launch and operate a satellite system in geostationary-satellite orbit to provide fixed-satellite services in the Ka-band.¹ In a separate order, the International Bureau assigned Lockheed Martin’s satellites to the 129° W.L., 51° E.L., 99° E.L., and 151.5° E.L. orbital locations.² The Bureau stated that its action would allow Lockheed Martin to provide businesses and consumers access to a variety of competitive satellite communications services in a frequency band suitable for advanced broadband interactive services. Lockheed Martin opposes the LRT Petition for Reconsideration.

2. LRT’s petition raises issues that we also address in a set of companion orders being released today. We therefore will act on LRT’s petition in this proceeding as part of that set. For the reasons discussed below, we deny LRT’s Petition for Reconsideration.

II. DISCUSSION

3. LRT represents certain individuals and entities that have been pursuing unsuccessfully claims against Comsat Corporation (“Comsat”) over several years in various fora, including the Commission. The claims arise out of disputes over operation of a former Comsat

¹ In the Matter of Lockheed Martin Corporation, *Order and Authorization*, DA 01-1688, File No. 39-SAT-P/LA-98 *et al.* (Int’l Bur. rel. August 3, 2001) (*Lockheed Martin Ka-band Authorization*).

² In the Matter of Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-Band, *Order*, DA 01-1693 (Int’l Bur. rel. August 3, 2001) (*Second Round GSO Assignment Order*).

subsidiary, BelCom, Inc.,³ of which one member of LRT was previously a director and owner.⁴ Comsat is wholly owned by Lockheed Martin. The Commission has denied the petitions of LRT in previous decisions and the court has dismissed LRT's appeal on these matters.⁵ We are today denying petitions of LRT in a variety of Comsat-related proceedings in companion orders. It is our expectation that LRT will not re-raise these issues in future proceedings.

4. In this proceeding, LRT requests that the Commission revoke the Bureau's grant of licenses to Lockheed Martin based upon what it claims is new information presented in its petition. LRT also requests that the Commission investigate and sanction Lockheed Martin and affiliates, including Comsat for alleged violations of federal law, and Commission policies and rules in connection with Lockheed Martin's Ka-band applications. It also requests adoption of "protective orders" in connection with future Lockheed Martin and Comsat operations. In support, LRT contends that the International Bureau failed to consider information that, it asserts, disqualifies Lockheed Martin from being a Commission licensee. Primarily, LRT raises the same issues previously raised in other proceedings and being addressed in the companion orders we are adopting today. LRT states that Comsat engaged in fraudulent billing activities through a previously-owned subsidiary, Electromechanical Systems, Inc. ("EMS"), as demonstrated in an EMS plea agreement arising from court litigation, and that these actions, along with Lockheed Martin's alleged failure to amend its Ka-band application to reflect the EMS matter raises character issues as to Lockheed Martin and Comsat's qualifications to be a Commission licensee. Additionally, LRT contends that Lockheed Martin failed to amend its Ka-band application to reflect its acquisition of Comsat.

5. Lockheed Martin states that LRT's petition is part of a continuing campaign of harassment against Comsat and Lockheed Martin. As to the EMS matter, Lockheed Martin states

³ Lockheed Martin sold BelCom to Weissker, Inc. BVI, a British Virgin Islands company, in late 2001.

⁴ LRT represents claims by William L. Whitely, Scott Robb, John T. Whitely and William H. Hallenbeck, and includes the Committee to Restructure the International Satellite Organizations ("CRISO") and BelCom Minority Shareholders and Claimants Committee ("BelCom Committee"). In 1998, Comsat successfully brought legal action in Delaware Chancery Court against a former defendant shareholder of BelCom, Scott Robb, who is one of those represented by LRT. The court found that Robb was in breach of fiduciary duty to BelCom by pursuing fraudulent claims against the company. *BelCom, Inc. v. Scott Robb*, Del. Civil Action No. 14663 (April 28, 1998), *aff'd. subnom. Scott Robb v. BelCom, Inc.*, 725 A.2d 443 (Jan. 20, 1999), rehearing denied (Feb. 11, 1999). In 2001, the Delaware Chancery court denied William Whitely's motion to vacate the 1998 *BelCom* decision and a sanctions *Order* issued February 21, 2001. *BelCom v. Robb*, Del. Ch. Case No. 14463, *Order*, August 21, 2001. A New York court has disbarred Scott Robb for conduct arising from actions against BelCom. *In re Robb*, N.Y. App. Div., October 23, 2001. And, the United States District Court for the Southern District of New York has (1) dismissed a Securities Act claim brought by LRT against Comsat, *Whitely v. Comsat*, S.D.N.Y. *Order*, Case No. 00 Cir. 9401 (October 29, 2001); and (2) dismissed LRT's complaint against Comsat, that made various allegations under federal and state law. *Whitely v. Comsat*, S.D.N.Y., Case No. 00 Cir. 9401, *Memorandum and Order* (September 24, 2001).

⁵ *William L. Whitely, et.al. v. Federal Communications Commission*, Case No. 00-4207 (2d Cir. June 1, 2001) (The court dismissed the petition for review on June 1, 2001, for failure to prosecute. On June 25, 2001, the court dismissed LRT's motion to reinstate its petition for review. On August 24, 2001, the court denied LRT's request that it reconsider its order to dismiss LRT's original petition for review.) In that order, the court also granted the Commission's request to require LRT to pay the Commission's attorney's fees.

that Comsat timely informed the Commission when EMS's misconduct was adjudicated as provided under Commission policy. It also states that the Comsat-Lockheed Martin merger proceeding expressly disclosed its Ka-band application and that this proceeding expressly described its acquisition of Comsat.

6. We first note that LRT states that it did not originally participate in this proceeding "because it had no knowledge that the subject license application (the Lockheed Martin Ka-band application) was under review by the International Bureau."⁶ The Commission's rules require that if a petition for reconsideration is filed by a person who is not a party to the proceeding, the petition:

shall state with "particularity the manner in which the person's interests are adversely affected by the action taken, and shall show good reason why it was not possible for him to participate in the earlier stages of the proceeding."⁷

Other than to describe other Comsat and Lockheed Martin related proceedings in which it has filed petitions, LRT fails to show how its interests have been adversely affected by the International Bureau's authorization of Lockheed Martin's Ka-band application. LRT does not show it is either a customer of Lockheed Martin or Comsat or a potential competitor in the provision of communications services. Nor does LRT show that it is a public interest representative acting beyond the interests of its members and their ongoing dispute with Comsat arising from the operation of BelCom. LRT makes no attempt to demonstrate good cause why it could not participate in the earlier stages of the proceeding. We therefore find LRT's petition procedurally defective.

7. Further, in the companion order we adopt today denying LRT's Petition for Reconsideration of the Commission's authorization of Lockheed Martin's acquisition of Comsat, we address and reject LRT's allegations that Comsat is not a qualified Commission licensee because of the EMS matter.⁸ We also find that Comsat complied with Commission requirements in notifying the Commission of the EMS matter. LRT does not, in this proceeding, provide any new factual information that would persuade us to reach a different decision on the content of this proceeding. Moreover, the circumstances surrounding the EMS matter were a matter of public record and known to the Commission when the International Bureau granted the Lockheed Martin Ka-band application. The International Bureau's action came over a year after Comsat informed the Commission of the plea agreement on the EMS case, and Lockheed Martin otherwise properly reported its acquisition of Comsat in this proceeding.⁹

⁶ LRT Petition for Reconsideration, filed August 31, 2001, at 1.

⁷ 47 C.F.R. § 1.106(b)(i) (2001).

⁸ Lockheed Martin Corporation, Comsat Government Systems, LLC and Comsat Corporation Applications for Transfer of Control of Comsat Corporation and its Subsidiaries, Licenses of Various Satellite Earth Station, private Land Mobile Radio and Experimental Licenses, and Holders of international Section 214 Authorizations, *Order and Authorization*, File Nos. SAT-T/C-20000323-00078 *et al.*, FCC 00-277, 15 FCC Rcd 22,910, *Erratum*, 15 FCC Rcd 23,506 (2000) (*Phase II Order*).

⁹ Letters to the Secretary, Federal Communications Commission, from Raymond G. Bender (Counsel for Comsat Corporation) accompanying amendments to earth station applications: 1) SES-MOD-

8. Finally, we note the following with regard to Comsat/Lockheed's claims that LRT and/or its members' primary aim is to harass Comsat and its successors and/or assigns by abusing the Commission's processes in order to cause Comsat and its successors and/or assigns to capitulate to LRT and/or its members' demands for compensation relating to a long ago corporate dispute involving the LRT members and Comsat. We take Comsat/Lockheed's claims very seriously. As described earlier in this order, there has been a documented pattern of conduct by LRT and/or its members with regard to Comsat and/or its successors or assigns that indeed appears to go beyond legitimate advocacy. In such cases, it is well-established that the Commission and its staff may impose sanctions upon parties participating in Commission proceedings if they file pleadings primarily for abusive purposes.¹⁰ These sanctions could include restrictions on participation in Commission proceedings to prevent abuse of its processes.¹¹ In considering challenges to pending applications, "the Commission need [not] allow the administrative processes to be obstructed or overwhelmed by captious or purely obstructive protests."¹² The Commission has authorized its Bureaus and Offices to impose sanctions upon participants whose primary purpose is to abuse the Commission's processes.¹³ Given the Commission's goal of encouraging participation in FCC proceedings, however, it only considers the possibility of such sanctions in egregious cases where the abusive nature of the pleadings is clear. In this regard, a pleading filed primarily to harass an applicant rather than to air legitimate, substantive objections relevant to the proceeding in which they are filed, is a situation that would justify a summary dismissal of such pleading.¹⁴ Alternatively, should a party engage in such an abusive course of conduct before the agency, the Commission may decide to require the party to obtain the Commission's prior permission to file documents based on a prior showing of public interest.¹⁵ We hereby expressly warn LRT and/or its members that they may face summary dismissal of their pleadings or the alternative procedure of prior screening of their pleadings should they file abusive or harassing pleadings with the agency.

19991115-0215700431; (2) SES-LRC-1998021700202 *et seq.*; (3) SES-MOD-2000313-00409 *et seq.*; (4) SES-LRC-19990330 *et seq.* and (5) SES-MOD-19990108-00020, dated August 21, 2000.

¹⁰ See, e.g., *In re Application of Nationwide Communications, Inc.*, *Memorandum Opinion and Order*, FCC 98-7, 13 FCC Rcd 5654, 5655-56 (1998) (*Nationwide Communications*).

¹¹ See, e.g., *In re Applications of Radio Carrollton, et al.*, *Memorandum Opinion and Order*, Docket No. 19636-37, 69 FCC 2d 1138, 1148-55 (1978).

¹² *United Church of Christ v. FCC*, 359 F.2d 994, 1005 (D.C. Cir. 1966).

¹³ See the Public Notice, *Commission Taking Tough Measures Against Frivolous Pleadings*, FCC 96-42, 11 FCC Rcd 3030 (1996).

¹⁴ See *Nationwide Communications*, 13 FCC Rcd at 5655-56.

¹⁵ See *In re Martin-Trigona*, 592 F.Supp. 1566, 1568 (D. Conn. 1984); *In re Notice to John Cervase*, Letter from Vincent J. Mullins, Secretary, FCC, by Direction of the Commission, *Notice*, FCC 75-891, 54 FCC 2d 1039 (1975).

9. Accordingly, IT IS ORDERED that the Petition for Reconsideration filed by Litigation Recovery Trust in this proceeding is DENIED in all respects.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary